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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,896	04/27/2001	Masaharu Hayashi	0425-0836P	7584

2292 7590 10/21/2004

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,896

Applicant(s)

HAYASHI ET AL.

Examiner

Alton N. Pryor

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 4,6-8,10-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 4,6-8,10,12,14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 7/29/04 have been fully considered but they are not persuasive. See arguments below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,6-8,10,12,14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '361 in view of Szoka et al (US 4394149: 7/19/83). JP' 361 teaches a method of applying a composition comprising stearic acid to plants. See abstracts. Although the references do not specifically state that their compositions in the method promote plant activation (improving fertilizer absorption or plant yield), it is inherent that plant activation would occur since the prior art teaches the application of stearic acid to the plants as in the instant claims.

JP '361 does not teach the fertilizer composition comprising EDTA. JP '361 does not teach the instant ppm range of stearic acid. However, Szoka teaches a method of applying a plant nutrient fertilizer composition comprising EDTA onto plants. See abstract, column 6 lines 19-35, column 8 lines 39-67. It would have been obvious to one having ordinary skill in the art to modify the invention of JP '361 to include the EDTA taught by Szoka. One would have been motivated to do this in order to make a composition that could complex metals for control release purposes. With respect to the

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amount of ingredients, one having ordinary skill in the art would have been motivated to determine the optimum amount of components through routine experimentation. One would have been motivated to do this in order to make a composition that would have been more effective in promoting plant growth. With respect to the composition comprising the instant ppm range of stearic acid, one having ordinary skill in the art would have been expected to determine the optimum amount of stearic acid. One would have been motivated to do this in order develop an invention that would have been effective in activating plants.

Claims 4,6-8,12,14,15,17,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over BE '401 in view of Szoka (US 4394149: 7/19/83). BE '401 or JP' 361 teaches a method of applying a composition comprising stearic acid to plants. See abstracts. Although the references do not specifically state that their compositions in the method promote plant activation (improving fertilizer absorption or plant yield), it is inherent that plant activation would occur since the prior art teaches the application of stearic acid to the plants as in the instant claims.

BE '401 does not teach for the nutrient composition comprising EDTA. BE '401 does not teach the instant ppm range of stearic acid. However, Szoka teaches a method of applying a plant nutrient fertilizer composition comprising EDTA onto plants. See abstract, column 6 lines 19-35, column 8 lines 39-67. It would have been obvious to one having ordinary skill in the art to modify the invention of BE '401 to include the EDTA taught by Szoka. One would have been motivated to do this in order to make a composition that could complex metals for control release purposes. With respect to the

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amount of ingredients, one having ordinary skill in the art would have been motivated to determine the optimum amount of components through routine experimentation. One would have been motivated to do this in order to make a composition that would have been more effective in promoting plant growth. With respect to the composition comprising the instant ppm range of stearic acid, one having ordinary skill in the art would have been expected to determine the optimum amount of stearic acid. One would have been motivated to do this in order develop an invention that would have been effective in activating plants.

Election Status

The elected invention comprising stearic acid is not patentable. See art rejections above.


Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alton Pryor
Primary Examiner
AU 1616